No. 81-6912

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

DAVID J. SCHOLL, Appellant,

v.

RUDOLPH ANSELMI, et al

ON APPEAL FROM THE SUPREME COURT OF
THE STATE OF WYOMING

TRAVERSE TO MOTION TO DISMISS OR AFFIRM

DAVID J. SCHOLL, Appellant
Pro Se

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TABLE OF AUTHORITIES

28 USC 1257 .....p.3

42 USC 1988 .....p.4

Wyoming Statutes 9-4-102 (b).....p.1

Wyoming Administrative Procedures Act p.1,4

STATEMENT OF THE CASE

The summary of the case presented by the Appellees excludes pertinent facts in the case, and distorts other facts by means of summarizing.

First of the ommissions is that Appellees admitted in the Stipulation of Facts that "no copy of the rule, regulation, memo, or interpretation of the law which the department invoke (sic) against Mr. Scholl ... was on file with the Office of the Secretary of State." The Wyoming Administrative Procedures Act states"

> "No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked for any purpose, until it has been filed with the secretary of state and made available for public inspection as herein under required."
>
> Wyoming Statutes 9-4-102 (b)

Second, the Appellees fail to mention that from the day on which the rule was invoked, the Appellant objected to signing the waiver in question, and continued to object on Constitutional grounds of the right to privacy.

It is important for the court to note that I attempted for a year and a half to obtain administrative relief in this matter - and was ignored by the Appellees.

Third, the Appellees summarize a portion of the Amended Petition for Writ of Mandamus which refers to damages. That summarization has deleted the very detailed explanation of the harm which they caused. That claim included facts which were sworn to by me, the Appellant, before a notary public as being true. Appellees, in their motion to dismiss, make it appear that they have directly quoted the Petition for Writ of Mandamus - however, it is not a full quotation. It is important that the court review that Petition and not accept the Appellees quote as being accurate.

Fourth, the Appellees fail to mention that the Stipulation of Facts specifically referred to documents which are part of the record of this case. Those documents were thus made part of the submitted evidence. They include copies of the numerous and detailed letters written by me to the Appellees explaining my objections to the rules in question and explaining that they were causing me considerable financial

and social hardship, and asking a review by the Appellees of the rule and their decision. The Appellees, therefore, are incorrect in stating that no evidence was submitted to justify my claim for damages.

Fifth, the Appellees claim that no evidence was submitted to prove that I or anyone else was compelled to sign the Information Practice Statement waiver of privacy. However, in their own briefs in the Wyoming courts, they have admitted that a license would be withheld unless it was signed. They have also admitted in those briefs, and in their Motion to Dismiss before this Court that the waiver is absolute, irrevocable, and is not affected by any disclaimer made the the signer.

JURISDICTION

The Appellees are incorrect in arguing that this matter should have been brought as a Petition for Writ of Certiorari. The Wyoming Court has upheld a law which I challenged as being repugnant to the Constitution of the United States - specifically the rule requiring waiver of the right to privacy in order to obtain a driver's license. A rule which has the effect of law can be challenged under 28 USC Section 1257 just as a statute may be challenged. I therefore am entitled to a review of this case as an Appeal.

The Wyoming Courts did decide the validity of the rule in question, and did so explicitly and without regard for the fact that the rule was not adopted in accordance with the provisions of the Wyoming Administrative Procedures Act.

The Appellees try to convince the court that I, the Appellant, never made a request for a hearing to the Appellees. Yet they admit that they know that I did "write letters and place phone calls and make informal personal visits, in abundance, to the DMV offices in the state capital."

It is ludicrous to argue that I was not denied a hearing and due process because I did not demand a hearing. I did demand that the Appellees review my case. They ignored that demand for a year and a half. It would be a mockery of the Constitutional right to due process to say that the right is not violated if it is simply ignored, instead of explicitly denied.

In the Wyoming courts it was found that I was denied a license to which I was fully entitled for a period of one and one half years. The denial of any right or privilege is sufficient to justify award of damages. To deny the award in this case has been a clear injustice which I urge this court to correct.

The Appellees have argued that I consented to their Information Practice Statement. This issue is clearly ripe for a decision by this court. The facts of the case show that I objected to the signing on the day of signing; that I intended and attempted to limit the waiver of privacy with a statement on the form; and that I have since consistently objected to and rescinded any broad permission which the Appellees and the Wyoming Courts have aduced from the signing.

This court is asked to determine whether such a waiver was valid, both in my specific case and generally. And you are asked by the Appellant if such a waiver can ever be revoked- or must remain a permanent, broad, and irre vocable waiver.

As the record of this case will show the court, the Trial Court ruled that the Appellees' rule requiring the waiver was valid and enforceable. That court did not simply refuse to rule on the issue as moot. The Trial Court was upheld by the Wyoming Supreme Court.

Should this Court let the Wyoming Court decision to stand the effects will be:

1. An individual will have been denied a right to which he was entitled, and which he vigorously demanded for a period of one and one half years and the harm cause by that denial will not be remedied by an award of any damages whatsoever;

2. An individual will have been denied due process for the same length of time, with no penalty to those infringing that right;

3. A rule which imposes a broad, blanket, irrevocable waiver of privacy will be held as legally valid regardless of any disclaimer or attempt to modify or revoke the waiver.

4. The Wyoming Administrative Procedures Act will become a hollow letter, allowing the imposition of any rule without following the procedures of that act, simply by the government official or agency claiming that it is a "form".

5. 42 USC 1988 will not be interpreted as Congress intended. Those who must represent themselves, due to lack of financial resources, will be "fair game" for those who violate our rights under color of law. Only those who can afford the services of an attorney, or whose cause is popular with various groups with sufficient resources will derive any protection from 42 USC 1988.

CONCLUSION

This case presents several issues of substance and of a Federal nature both of equity and law.

Therefore the Appellant urges the court to accept this Appeal for full presentation of the arguments in briefs and oral hearings before the Court.

Respectfully submitted this 25th day of July, 1982

David J. Scholl

David J. Scholl, Appellant
Pro Se